Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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November 8, 1993

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SUMMARY

The Commission appears to have applied an unreasonably narrow interpretation to the statutory provisions which does not reflect the intent of Congress and does not meet the public interest objectives of the statute. The Commission's interpretations of "for profit", "interconnected" and "effectively available to a substantial portion of the public" must be broadened. The Commission should also adopt its second interpretation of "functionally equivalent". Licensed PCS services should generally be classified as commercial and treated as common carrier services for purposes of regulation. In determining whether to apply Title II regulation to mobile services, the Commission should seek to minimize regulation and, if regulation is deemed to be necessary, to regulate all substitutable services in an equivalent manner.

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The United States Telephone Association (USTA) respectfully submits its comments on the above-referenced rulemaking proceeding (NPRM) released October 8, 1993. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the U. S.

I. INTRODUCTION.

In response to provisions of the Omnibus Budget Reconciliation Act of 1993, signed into law on August 10, 1993[1], the Commission has issued this Notice of Proposed Rulemaking (NPRM) to create a framework for the regulation of mobile radio services, including personal communications services (PCS). In the NPRM, the Commission seeks comment on the appropriate definitions of commercial mobile service and private mobile service; the proper classification of existing services, as well

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[1]Pub. L. No. 103-66, 47 U.S.C. §§ 153(n), 332.

as future services such as PCS; and which provisions of Title II of the Communications Act should be applied to commercial mobile services. As will be discussed below, USTA believes that the public interest will best be served by recognizing the intent of Congress that the definition of commercial mobile service is intended to ensure that a wide range of services are provided as common carrier services and by recognizing that regulation should be aimed at promoting competitive service offerings, and not at promoting certain service providers.

Section 332(c)(1)(A) of the statute states that any person providing commercial mobile service shall be treated as a common carrier subject to the requirements of Title II of the Communications Act. In Section 332(d), the statute establishes a three-prong test for determining whether a mobile service is commercial. A commercial mobile service must be for profit, interconnected to the public switched network and effectively available to a substantial portion of the public. The statute also specifies that a mobile service is commercial if it is the functional equivalent of a commercial mobile service.[2]

The Commission seems to have applied an unreasonably narrow interpretation to the statutory provisions noted above which does

[2]Section 332(d)(3) states that the term private mobile service means any mobile service that is not a commercial mobile service or the functional equivalent of a commercial mobile service. Thus, a mobile service may be classified as commercial even if it does not meet the statutory definition.

not meet the public interest objectives of the statute. For example, the Commission's interpretations of "for profit", "interconnected service" and "effectively available to a substantial portion of the public" are too restrictive and ignore the commercial nature of many private land mobile services. Likewise, the Commission's first stated interpretation of "functionally equivalent" ignores the plain meaning of the statutory language. Finally, the Commission's proposal to apply disparate regulatory treatment to commercial mobile services under Title II ignores Congress' intent to make such regulation more nearly uniform and balanced.

II. THE COMMISSION'S INTERPRETATION OF COMMERCIAL MOBILE SERVICE SHOULD BE EXPANDED.

A. Services Provided "For Profit".

In order to capture the commercial nature of many private mobile services, USTA recommends that the Commission interpret "for profit" to mean any service which is provided to an unaffiliated entity and for which compensation is received. For example, a private land mobile licensee that builds a system and makes excess capacity available to non-affiliated entities for a fee should be considered to be providing a "for profit" service.

As the Commission points out, under Section 90.179 of its rules, a sharing arrangement is considered "for-profit" when a licensee profits from the arrangement. However, USTA believes that systems licensed to multiple entities pursuant to Section

90.185 should not be considered "for profit" since each licensee is considered to be an equal owner and controller of the system, so long as each is using the license for internal purposes only. There may be cases where it is difficult to distinguish between a service that is "for profit" and one in which the costs are truly shared. While USTA believes that all shared private land mobile systems, with the exception of multiply licensed systems, should be considered "for profit", the Commission may have to make such a determination on a case-by-case basis.

B. Services "Interconnected" to the "Public Switched Network".

USTA agrees with the Commission that there should be a distinction between mobile systems that are physically interconnected with a public network and those mobile systems that make an interconnected service available. USTA also agrees that the key factor the Commission should utilize in determining whether a system is interconnected is end user accessibility. Therefore, USTA would recommend that the Commission interpret "interconnected service" to be any service that enables end users to communicate via a public network. Service providers that interconnect with a commercial mobile service provider should automatically be considered to offer interconnected service since they will be able to communicate with other public network services through the commercial mobile service provider.

Using that interpretation, "store and forward" services, such as paging, would be considered interconnected. While these types of services do not generally allow subscribers to directly access a public network, they do facilitate communications across these networks. This would be consistent with the Commission's decision in Intelsat.[3]

C. Services "Effectively Available to a Substantial Portion of the Public".

USTA agrees that Congress intended to expand the definition of commercial mobile service to include some existing private services. Again, Congress' inclusion of functional equivalent services as commercial mobile services is indicative of its intent to broaden the definition of commercial mobile service. Limits on system capacity, service area size and location do not necessarily mean that a service is not effectively available to a substantial portion of the public and may not represent effective measures to make such a determination.

Licenses that do not have "limited eligibility" restrictions, such as specialized mobile radio and private carrier paging, should certainly be considered to make service available to a substantial portion of the public. Even some "limited eligibility" private land mobile licensees should be evaluated in light of the statute. For example, Business Radio

[3]NPRM at ¶ 18.

Service, as defined in Section 90.75 of the Commission's rules, includes any businesses involved in a commercial activity, educational institutions, churches and hospitals. This may include a substantial portion of the public in some instances. Special Industrial Radio Service and Local Government Radio Service licensees should also be evaluated to ensure that their use reflects the intent of Congress.

D. Services Which Are "Functional Equivalents".

The Commission proposes two interpretations of private mobile service. USTA believes that the first interpretation is incorrect. This interpretation presumes that a service that meets the statutory definition of commercial could still be classified as private if it is not also the functional equivalent of a commercial service. This interpretation also suggests that the test for functional equivalency be based on frequency reuse techniques and wide area service. Such a test is inappropriate. The proper test of whether a service is a functional equivalent of another service should be based on the nature of the service and customer perception.

The Commission's second interpretation best reflects the language of the statute. The plain meaning of Section 332(d)(3) states that no service shall be deemed private if it meets the statutory definition or is the functional equivalent of a commercial service. To further reflect the intent of Congress on

this issue, the Commission should acknowledge that a service that does not meet the statutory definition of commercial mobile will be considered commercial if it is the functional equivalent of a commercial service. For example, a service that is not provided "for profit" must still be considered commercial if it is functionally equivalent to a commercial mobile service.

III. REGULATORY CLASSIFICATION OF EXISTING SERVICES.

Using the interpretations recommended by USTA as described above, existing services which meet the three-prong test or that are functionally equivalent to a commercial service should be classified as commercial. Any other mobile services should be classified as private. The Commission should re-evaluate the definitions contained in the current rules describing private mobile services. Some existing private services clearly meet the statutory definition of commercial, while others should be classified as commercial because they are functionally equivalent to a commercial mobile service. For example, services provided by specialized mobile radio service providers generally meet the definition of commercial mobile service and, incidentally, are functionally equivalent to commercial mobile services. Consequently, they should be classified as commercial. Services provided by private carrier paging operators satisfy the statutory definition and, incidentally, are functionally equivalent to common carrier paging services. They should also be classified as commercial.

"Limited-eligibility" services should not categorically be excluded from a commercial classification. As mentioned above, some of these services meet the statutory definition and provide service to a substantial portion of the public. The Commission should also determine if any such services are functionally equivalent to a commercial service.

Private land mobile systems that are used by the licensee only for internal purposes should be considered private if they provide dispatch service only. However, if they also provide interconnected service as defined above, they may be providing a functionally equivalent service. In that case, they should be classified as commercial.

Shared private land mobile systems should be considered to provide "for profit" services unless the systems are multiply licensed, as noted above. If shared systems meet the statutory definition of commercial mobile service or are functional equivalents, they should be classified as commercial.

All common carrier services should be classified as commercial. Further, as is stated in the Section 332(c)(2), since private land mobile licensees which are reclassified as commercial can continue to provide dispatch service, all common carriers should be permitted to provide dispatch service.

IV. REGULATORY CLASSIFICATION OF PCS.

Licensed PCS services should generally be classified as commercial mobile services and treated as common carrier services for purposes of regulation. This certainly makes sense given the fact that the record before the Commission, and the Commission itself has acknowledged, reflects the fact that PCS may develop as a substitute for either cellular or exchange telephone service. Treating licensed PCS services as commercial would provide the Commission with the basis to regulate providers of similar services in the same manner and allow it meet its goal of encouraging the competitive delivery of PCS. There should be no difference in treatment between narrowband and broadband PCS. Unlicensed PCS should be classified as commercial or private based on how the services are offered by the service provider.

It is likely that the majority of licensed PCS offerings will automatically meet the statutory definition of commercial mobile service given the Commission's decision as to how PCS should be offered. By adopting larger service area parameters and strict buildout requirements, PCS will probably effectively serve a substantial portion of the public. Even if used for internal purposes only, USTA believes that any resale to unaffiliated users would constitute commercial service. The statute specifies, and the Commission has long required, exchange carriers to define appropriate interconnection upon reasonable request. The potential public benefits of PCS will be greater if

PCS offerings are interconnected with a public network and it seems likely that many PCS services will be interconnected to a public network.

The Commission initiated its PCS proceeding with the intent to ensure that all mobile services are provided with the highest quality at reasonable rates to the greatest number of consumers. The Commission established four objectives in providing spectrum and a regulatory structure for PCS: universality; speed of deployment; diversity of services; and competitive delivery.[4] It would not be in the public interest and would be contrary to the Commission's stated goals and objectives to classify licensed PCS as private.

V. APPLICATION OF THE PROVISIONS OF TITLE II OF THE COMMUNICATIONS ACT TO COMMERCIAL MOBILE SERVICES.

The overriding principles in establishing a regulatory framework for all mobile services should be to minimize regulation and, if regulation is deemed necessary, to regulate all substitutable services in an equivalent manner. Only in this way will the Commission be able to avoid conferring a competitive advantage on certain providers or creating classes of providers and services. PCS, in particular, represents a new family of services. No potential provider of PCS should enjoy any

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[4]Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, Second Report and Order, released October 22, 1993 at ¶ 5.

regulatory advantage in developing and deploying PCS offerings. The marketplace should be the ultimate arbiter of who the providers of mobile service are and which mobile services are deployed. The Commission should refrain from any disparate treatment of commercial mobile services and should treat all commercial mobile service providers in the same manner if it decides to forbear from any Title II requirements.

VI. RIGHT TO INTERCONNECTION.

As stated above, USTA believes that customers can benefit from the interconnection of mobile service with a public network. Such interconnection can reduce the cost to provide the service, can facilitate broad availability, can speed deployment and can enhance mobile service offerings based on existing and future intelligent network features. Exchange carriers will provide interconnection on a non-discriminatory basis, consistent with existing rules.

The Commission should make it clear, however, that all other network providers should be required to provide non-discriminatory interconnection to the public switched network to enable exchange carrier customers to take advantage of the features and capabilities of other public networks.

VII. CONCLUSION.

USTA urges the Commission to reflect the intent of Congress it interpreting the statutory definitions as discussed in these comments.

Respectfully submitted

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